

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MUHAMMAD KHAN,  
Plaintiff,  
v.  
M. PAYTON,  
Defendant.

Case No. 20-03086 BLF (PR)

**ORDER GRANTING MOTION FOR  
SECOND EXTENSION OF TIME TO  
FILE SECOND AMENDED  
COMPLAINT**

(Docket No. 27)

Plaintiff, a state prisoner, filed a *pro se* civil rights action pursuant to 42 U.S.C. § 1983 against an officer at San Quentin State Prison. Dkt. No. 1. On June 14, 2021, the Court screened Plaintiff's first amended complaint and granted leave to amend an equal protection claim. Dkt. No. 22. In the alternative, Plaintiff was advised that he may file notice to proceed solely on the cognizable claims identified in the order. *Id.* at 8.

Plaintiff has filed a motion for a second extension of time of 90 days to file a second amended complaint. Dkt. No. 26. Defendant has filed a statement of non-opposition to Plaintiff's motion. Dkt. No. 27. For good cause shown and Defendant's non-opposition, Plaintiff's motion is GRANTED.

No later than February 17, 2022, Plaintiff shall file a second amended complaint using the court's form complaint to correct the deficiencies discussed therein with respect

to the equal protection claim against Defendant Payton. The second amended complaint must include the caption and civil case number used in this order, *i.e.*, Case No. C 20-03086 BLF (PR), and the words “SECOND AMENDED COMPLAINT” on the first page. Plaintiff must answer all the questions on the form in order for the action to proceed. Plaintiff is reminded that the second amended complaint supersedes the original and the first amended complaints, and Plaintiff may not make references to either the original or first amended complaint. Claims not included in the second amended complaint are no longer claims and defendants not named in an amended complaint are no longer defendants. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.1992).


**In the alternative, Plaintiff may file notice that he wishes to proceed solely on the cognizable claims discussed in the court order, *i.e.*, First Amendment claim for the denial of religious freedom, Eighth Amendment claim for the denial of food, violation of due process, and state law claims for intentional infliction of emotional distress and negligence by SQSP, and strike the equal protection claim from the amended complaint.** Dkt. No. 22 at 4-5.

Failure to respond in accordance with this order by filing a second amended complaint in the time provided will result in the dismissal of the equal protection claim for failure to state a claim. This action will proceed on the cognizable claims discussed above.

This order terminates Docket No. 27.

**IT IS SO ORDERED.**

**Dated: \_\_December 6, 2021\_\_**

  
BETH LABSON FREEMAN  
United States District Judge